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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

INTERNATIONAL WOODWORKERS OF AMERICA, U.S., AFL-CIO, and its LOCAL NO. 5-15,
Petitioner,

vs.

WEYERHAEUSER COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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HOPP

QUESTION PRESENTED

When an arbitrator has resolved a labor-management grievance by reliance on contract language that he holds to be unambiguous, may the Court of Appeals vacate the arbitration award because it believes the language to be ambiguous, and order a remand for evidence on bargaining history and past practice?

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PETITION FOR A WRIT OF CERTIORARI

The International Woodworkers of America, U.S., AFL-CIO, and its Local No. 5-15 respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinions of the court of appeals and the district court, the report of the magistrate judge, and the award of the arbitrator appear in Appendix A. The opinion of the court of appeals is reported at 7 F.3d 133 (8th Cir. 1994).

JURISDICTION

The court of appeals by 6 to 3 denied petitioners' petition for rehearing on January 11, 1994, and this petition for certiorari is filed within 90 days of that date. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), provides, in relevant part, that "[s]uits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

On July 24, 1991, Arbitrator Barnett M. Goodstein rendered a decision in favor of the International Woodworkers of America, U.S., AFL-CIO, and its Local No. 5-15 [hereinafter collectively the union]. Arbitrator Goodstein had been charged with deciding whether the Weyerhaeuser Company [hereinafter the employer] had violated the collective bargaining agreement between the parties by ceasing to pay its Wright City, Oklahoma maintenance employees for their half-hour lunch period.

The arbitrator ruled that the employer had violated the collective bargaining agreement. The arbitrator's decision was based upon his interpretation of Article XI, Section I of the agreement, which he expressly held to be unambiguous.

On October 25, the union filed an action in the United States District Court for the Western District of Arkansas to enforce the arbitration award. On December 9, the employer counterclaimed, requesting that the award be vacated.

The parties filed cross-motions for summary judgment. On August 28, 1992, United States Magistrate Judge Charles G.

Vaccaro issued a report recommending that both motions for summary judgment be denied because a genuine issue of material fact existed. After the union and the employer filed responses to the magistrate judge's report, United States District Judge Bruce M. Van Sickle granted the union's motion for summary judgment and ordered that the arbitration award be enforced.

The court found that the award concerned the construction of the contract and thus the court had no business overruling the arbitrator. After Judge Van Sickle denied the employer's motion to set aside the judgment, the employer appealed to the United States Court of Appeals for the Eighth Circuit.

On October 12, 1993, the Eighth Circuit issued its opinion vacating the arbitrator's award. The court disagreed with the arbitrator about whether the crucial contract language was ambiguous, and found ambiguity that could be resolved only by considering the parties' bargaining history and past practices.

The union's petition for rehearing and suggestion for rehearing en banc were denied. Chief Judge Arnold, Judge McMillian, and Judge Morris Sheppard Arnold would have granted the suggestion, and Judge John R. Gibson took no part in the decision.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF THE SUPREME COURT AND OF THE OTHER COURTS OF APPEAL

The rule for court review of the decision of a labor-management arbitrator is simple and well-established. In a seminal decision over thirty years ago:

> The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements.
>
> . . . .
>
> [T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns the construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596, 599 (1960) [hereinafter *Enterprise Wheel*]. Seven years ago this Court reiterated its rule that courts have a limited function in reviewing arbitral awards: "courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987) [hereinafter *Misco*].

Despite these clear commands, the Eighth Circuit panel reversed the opinion of the district court and vacated the arbitrator's award because: "[W]e cannot agree that [Article XI, Section I(4)] is unambiguous." App. at A-7.

Decisions about ambiguity necessarily underlie, and are part and parcel of, every interpretation of the provisions of a collective bargaining agreement by an arbitrator. If unambiguous, the arbitrator will apply the plain words of the agreement; if ambiguous, the arbitrator may "resort to [the] technical rules of interpretation." Frank Elkouri & Edna A. Elkouri, *How Arbitration Works* 342 (4th ed. 1985) [hereinafter *How Arbitration Works*].

As part of his interpretation of the collective bargaining agreement, the arbitrator's decision about ambiguity must receive the deference ordered by this Court; courts "do not sit to hear claims of factual or legal error by an arbitrator. . . . [t]he parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract." *Misco*, 484 U.S. at 38.

For the repeated conflicts among the circuits that the instant decision creates, *see, e.g., International Bhd. of Electrical Workers v. Public Serv. Co. of New Mexico*, 980 F.2d 616, 619 (10th Cir. 1992) ("it is not our function to determine whether the arbitrator misinterpreted the Agreement"); *Polk Bros., Inc. v. Chicago Truck Drivers Union*, 973 F.2d 593, 597(7th Cir. 1992) ("This circuit upholds an arbitrator's award based on a misreading of the contract so long as the arbitrator's interpretation is derived from the language of the contract."); *Local 1199, Drug, Hospital and Health Care Employees Union v. Brooks Drug Co.*, 956 F.2d 22, 26 (2d Cir. 1992) ("Our task, however, is not to review the accuracy of the arbitrator's construction of the . . . clause."); *Lattimer-Stevens Co. v. United Steelworkers of America*, 913 F.2d 1166, 1168-69 (6th Cir. 1990); *Stead Motors v. Automotive Machinists Lodge 1173*, 886 F.2d 1200, 1204 (9th Cir. 1989) (en banc), *cert. denied*, 495 U.S. 946 (1990) (a reviewing court is "bound — under all except the most limited circumstances — to defer to the decision of [the arbitrator], even if . . . [the decision of the arbitrator] finds the facts and states the

law erroneously"]; *American Postal Workers Union v. United States Postal Serv.*, 789 F.2d 1, 2 (D.C. Cir. 1986) ("A court has no authority to discard a labor arbitration award which is concededly based on the collective bargaining agreement and then substitute its own view of the proper interpretation of the contract.").

II. AN ARBITRATOR IS NOT COMPELLED TO LOOK TO THE PARTIES' PAST PRACTICES OR TO THE LAW OF THE SHOP IN INTERPRETING THE LANGUAGE OF A COLLECTIVE BARGAINING AGREEMENT

In its opinion in this case, the Eighth Circuit panel stated that it has "repeatedly applied the Supreme Court's teaching that labor arbitrators must consider the parties' past practices and 'the common law of the shop' in interpreting collective bargaining agreements." App. at A-6.

The Supreme Court has never taught that an arbitrator *must* consider the parties' past practices and the law of the shop in interpreting collective bargaining agreements. Rather, this Court has stated that the arbitrator "may . . . look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement." *Enterprise Wheel*, 363 U.S. at 597. This permissive approach to an arbitrator's resort to sources outside the agreement itself has been followed by the several circuit courts of appeal. *See, e.g., Lattimer-Stevens Co. v. United Steelworkers of America*, 913 F.2d 1166, 1170 (6th Cir. 1990) ("The arbitrator may consider prior shop practice as evidenced by the parties' past conduct, but he is not bound by such practice."); *Chicago Newspaper Publishers Assoc. v. Chicago Printing Pressmen's Union*, 821 F. 2d 390, 394 (7th Cir. 1987).

Resort to sources other than the language of the contract is appropriate only if the language of the contract is ambiguous: "'The sources of contract interpretation include the language of

the contract and, to the extent it is ambiguous, bargaining history and past practice.'" *How Arbitration Works* 82 (Supp. 1991) (quoting *Downington School Dist.*, 88 Lab. Arb. (BNA) 59, 61 (1986) (Zirkel, Arb.)).

III. THE ISSUE IS IMPORTANT

Federal labor law and policy encourage arbitration. "[T]he grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government." *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960) [hereinafter *Warrior & Gulf*].

Because of the importance of arbitration in industrial self-government, *see How Arbitration Works* 6-7, and its particular role in preventing industrial strife, special deference was given to decisions by the arbitrator that concern the collective bargaining agreement. *Warrior & Gulf*, 363 U.S. at 581-83. This special deference was intended to ensure the finality of arbitral awards, and thus to comport with the statutory scheme.

The decision by the Eighth Circuit panel threatens this system. If the courts are able to reconsider the merits of a decision of an arbitrator, and to "correct" perceived misinterpretations by the arbitrator, the arbitrator's award is final no more.

Erosion of the principles embodied in the 1960 *Steelworker Trilogy*, which in 1987 *Misco* was designed to stop, must not be permitted to begin again.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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